UNITED STATES OF AMERICA BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION

emedying Undue Discrimination through)	Docket No. RM01-12-000
Open Access Transmission Service and)	
Standard Electricity Market Design)	

COMMENTS OF
THE ILLINOIS COMMERCE COMMISSION,
THE INDIANA UTILITY REGULATORY COMMISSION,
THE IOWA UTILITIES BOARD,
THE KANSAS CORPORATION COMMISSION,
THE MICHIGAN PUBLIC SERVICE COMMISSION,
THE MINNESOTA PUBLIC UTILITIES COMMISSION,
THE MINNESOTA DEPARTMENT OF COMMERCE,
THE MISSOURI PUBLIC SERVICE COMMISSION,
THE NORTH DAKOTA PUBLIC SERVICE COMMISSION,
THE OKLAHOMA CORPORATION COMMISSION,
THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION,
AND THE PUBLIC SERVICE COMMISSION OF WISCONSIN
ON REGIONAL STATE COMMITTEES

Pursuant to the Federal Energy Regulatory Commission's (Commission) notice issued December 20, 2002, in the above-captioned proceeding, the Illinois Commerce Commission, the Indiana Utility Regulatory Commission, the Iowa Utilities Board, the Kansas Corporation Commission, the Michigan Public Service Commission, the Minnesota Public Utilities Commission, the Minnesota Department of Commerce, the Missouri Public Service Commission, the North Dakota Public Service Commission, the Oklahoma Corporation Commission, ¹ the South Dakota Public Utilities Commission, and the Public Service Commission of Wisconsin, hereafter referred to as Indicated Midwest

¹ While the Oklahoma Corporation Commission supports this joint effort, this support is not intended to supersede the OCC's own filed Comments in this or subsequent Dockets.

Commissions,² hereby submit their comments on the issues of regional state advisory committees and state participation in Regional Transmission Organization (RTO) activities.

I. BACKGROUND

On July 31, 2002, the Commission issued the Standard Market Design (SMD) Notice of Proposed Rulemaking (NOPR).³ By Notices issued September 10, 2002, and October 2, 2002, the Commission set November 15, 2002, as the deadline for Comments on Phase I issues and January 10, 2003, as the deadline for Comments on Phase II issues. In the December 20, 2002, notice, the Commission stated that it "will accept late-filed comments through February 28, 2003, for any party needing the additional time."

II. DISCUSSION OF ISSUES

The NOPR discusses two ways in which states could participate in RTO activity and regional planning, a Regional State Advisory Committee (RSAC) [¶ 552] and a Multi-State Entity (MSE) [¶ 553]. Since issuance of the NOPR, representatives of the Commission have made statements clarifying that the RSAC proposals in the NOPR, in particular, require further modification before they can be implemented. Commission representatives have made clear that, in hindsight, the Commission's reference to the "advisory" nature of the NOPR's proposal for state participation should have been stated otherwise. The Commission has solicited comments, not only on the proposals made in the NOPR, but also on preferred alternatives. The Indicated Midwest Commissions herein provide comments on these matters in the spirit of state/federal cooperation.

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² Commissioners Rebecca Klein, Brett Perlman, and Julie Parsley, of the Public Utility Commission of Texas, individually join this comment. Because of procedural requirements, the Texas Commission itself has not acted on the comment.

³ Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design, Notice of Proposed Rulemaking, 100 FERC ¶ 61,138 (2002).

Commission representatives have since clarified the Commission's position that there are issue areas where regional cooperation among the states to collectively exercise their authority would be desirable in advancing many of the objectives of a robust, competitive wholesale electricity market. Commission representatives have also expressed the opinion that it may be in the public interest for the Commission to delegate to state regional organizations decision-making responsibility over issues that may be Commission-jurisdictional, but in which the regional state organization may have particular expertise and a heightened interest. Finally, Commission representatives have recognized the value both to the Commission in receiving organized advice from state authorities on issues that are within Commission jurisdiction and to the RTO in receiving organized advice from state authorities on these and other issues. While the Commission has a keen interest in encouraging the states to organize, it is within the purview of the states to determine how best to organize with respect to state jurisdictional issues.

Consequently, the Indicated Midwest Commissions have worked together to address the most mutually beneficial way to accomplish their collective goals. The Indicated Midwest Commissions generally support the Commission's proposal to better organize regional state participation in electric industry and wholesale power market issues. However, they believe that a more flexible approach would be in the public interest. In particular, the Indicated Midwest Commissions support the establishment of a flexible regional organization, a "Midwest Multi-State Committee" as more fully described in Section III below.

There are, at least, five different general issue areas for which regional state organizations may be useful:

- (1) issues related to wholesale power markets and interstate transmission that are state-jurisdictional and on which the public interest would benefit from coordination and/or centralization of analysis and state decision-making;
- (2) issues related to wholesale power markets and interstate transmission for which jurisdiction is shared between the Commission and states or in which jurisdictional clarity is uncertain or evolving and in which the public interest would benefit from avoiding unproductive state/federal jurisdictional clashes;
- (3) issues related to wholesale power markets and interstate transmission that are arguably Commission-jurisdictional, but for which the public interest would be better served if addressed by a regional state organization given state expertise or interest in allocations between and among states;
- (4) issues that are Commission-jurisdictional but for which the Commission would benefit from receiving coordinated, coherent advice from a regional state organization; and
- (5) issues involving RTO implementation, operation, and oversight in which the RTO would benefit from receiving coordinated and coherent advice from a regional state organization.

The Indicated Midwest Commissions believe that development of regional state organizations to address some or all of these issue areas could significantly benefit the public interest. These comments will explore these issue areas and assess the benefits to the Indicated Midwest Commissions and to the public of the proposed regional state organization.

• Issues related to wholesale power markets and interstate transmission that are state-jurisdictional and on which the public interest would benefit from coordination and/or centralization of analysis and state decision-making

The Indicated Midwest Commissions believe that coordination would be appropriate for some state jurisdictional issues that are related to wholesale power markets and interstate transmissions, where it is in the public interest. The Commission took note of a report issued in July 2002, by the National Governors' Association Task Force on Electricity Infrastructure, "Interstate Strategies for Transmission Planning and Expansion."

The NGA Task Force Report proposes creation of organizations called Multi-State Entities (MSEs) to facilitate state coordination on transmission planning, certification, and siting at the regional level. The MSE would: (1) actively participate in the RTO's transmission planning process; (2) coordinate the various states' review of transmission permitting cases; and (3) identify best practices for state transmission planning, siting, and permitting.

In particular, the Commission favorably notes the NGA Task Force Report in \P 339 of the NOPR stating,

A critical piece of the transmission planning process is state-level siting decisions. We note a recent National Governors' Association report that recommends Multi-State Entities to facilitate regional transmission planning decisions. Multi-State Entities, along with an open regional planning process, would preserve the states' role in siting decisions, while promoting regional solutions. A Multi-State Entity could be an important component of the regional planning process.

Furthermore, footnote 164, referenced in ¶ 348 of the NOPR, correctly notes that the states, not the Commission, have the ultimate authority over the siting of transmission facilities.

Regional coordination of individual states' analysis of need for transmission facilities and the siting of transmission facilities as discussed in the NGA Task Force Report

are areas of state jurisdiction where the public interest would benefit from coordination and joint analysis. These types of issues lend themselves particularly well to coordination through a regional state approach like that of an MSE.

- Issues related to wholesale power markets and interstate transmission for which jurisdiction is shared between the Commission and states or in which jurisdictional clarity is uncertain or evolving and in which the public interest would benefit from avoiding unproductive state/federal jurisdictional clashes, and
- Issues related to wholesale power markets and interstate transmission that are arguably Commission-jurisdictional, but for which the public interest would be better served if addressed by a regional state organization given state expertise and interest in allocations between and among states

In Paragraphs 551 through 555, the Commission introduces the concept of the Regional State Advisory Committee and sketches out some issues that it might address. Paragraph 554 lists some of these issues that "may fall under federal, state, or shared jurisdiction." These issues include, but are not limited to: resource adequacy standards, transmission planning and expansion, rate design and revenue requirements, market power and market monitoring, demand response and load management, distributed generation and interconnection policies, energy efficiency and environmental issues, and RTO management and budget review. While the states may dispute the extent of the Commission's jurisdiction over these issues or parts of these issues, the Indicated Midwest Commissions, nevertheless, are encouraged by the Commission's statement in Paragraph 555 of the NOPR that, "We [the Commission] believe that the Regional State Advisory Committees can bring a valuable perspective to these issues and should play a role in deciding these issues in partnership with the Commission." The Commission further stated, "Once the advisory committees are established, we intend to work with them to establish protocols for deciding these regional rate issues." The Indicated Midwest Commissions believe these statements exemplify the

Commission's willingness to: (1) respect the regional state committee's decisions in issue areas that are clearly within state jurisdiction; (2) defer to regional state committee decisions on issues of uncertain jurisdiction or where jurisdiction is shared between the Commission and the states; and (3) delegate to regional state committee decision issues that are Commission jurisdictional, but for which states "can bring a valuable perspective" because of state expertise or interest in allocations between and among states.

• Issues which are Commission-jurisdictional but for which the Commission would benefit from receiving coordinated coherent advice from a regional state organization

The Commission's SMD NOPR recognizes that, "States have an important role in the process of creating and sustaining an efficient competitive wholesale market for electricity." ¶551. The NOPR further notes that state-federal panels have been assembled as "a forum for the Commission and state commissioners to discuss issues related to RTO development." ¶551.

The Indicated Midwest Commissions recommend that the Commission go beyond these initial efforts to facilitate a strong partnership with state commissions. We encourage the Commission to further explore all powers authorized under section 209 of the Federal Power Act for cooperation with the states. These provisions recognize that states are partners with the Commission in the public interest and do not just appear as another party to its proceedings. Section 209(a) of the Federal Power Act provides:

The commission may refer any matter arising in the administration of this Part to a board to be composed of a member or members, as determined by the Commission, from the State or each of the States affected or to be affected by such matter. Any such board shall be vested with the same power and be subject to the same duties and liabilities as in the case of a member of the Commission when designated by the Commission to hold any hearings. The action of such board shall have such force and effect and its proceedings shall be conducted in such manner as the commission shall by regulations

prescribe. The board shall be appointed by the Commission from persons nominated by the State commission of each state affected, or by the Governor of such State if there is no State commission. Each State affected shall be entitled the same number of representatives on the board unless the nominating power of such State waives such right. The Commission shall have discretion to reject the nominee from any State, but shall thereupon invite a new nomination from that State. The members of a board shall receive such allowances for expenses as the Commission shall provide. The Commission may, when in its discretion sufficient reason exists therefore, revoke any reference to such a board.

Implementation of state/federal partnership under these arrangements can likely be quickly developed and established given that such a clear framework is already prescribed in the law. Section 209 defines the role of the states in relation to the Commission, is adaptable for regional use (i.e. the "states affected"), and focuses on State commissions. Section 209 also limits the scope of the joint board to matters that are Commission jurisdictional ("any matter arising in the administration of this Part"). For example, the Commission could defer to the states, through a joint board process, decisions as to pricing of regional expansions unless inconsistent with the FPA. If the approach adopted by the states is believed by the Commission to be inconsistent with the FPA, then it could overrule the states. This approach would be much stronger than the "look favorably" language currently in the SMD rulemaking. See ¶ 201.

Sections 209(b) and (c) of the Federal Power Act offer other ways to implement a true cooperative federal-state relationship." Section 209(b) of the Federal Power Act states:

The Commission may confer with any State commission regarding the relationship between rate structures, costs, accounts, charges, practices, classifications, and regulations of public utilities subject to the jurisdiction of such State commission and of the Commission; and the Commission is authorized, under such rules and regulations as it shall prescribe, to hold joint hearings with any State commission in connection with any matter with respect to which the Commission is authorized to act. The Commission is authorized in the administration of this Act to avail itself of such cooperation, services, records, and facilities as may be afforded by any State commission.

This section gives the Commission the authority to confer with the states and to hold joint hearings.

The Indicated Midwest Commissions are eager to establish such processes, mechanisms and protocols for advising the Commission on matters within its jurisdiction. The Commission began this process with *State-Federal Regional RTO Panels*, 97 FERC ¶ 61,182 (2001), reh. denied, 98 FERC ¶ 61,3019 (2002). The Indiana Utility Regulatory Commission recently sought the Commission's advice on how to coordinate reviews of mergers, in *Ameren Service Co. et al.*, Docket No. ER02-2233, Notice of State-Federal Panel Discussion, issued January 10, 2003, where the sharing of information and development of joint records were discussed. The Indicated Midwest Commissions agree that the Commission's authority to seek advice from and conduct discussions with state commissions is well established.

For issues that are Commission-jurisdictional but for which the Commission would benefit from receiving coordinated coherent advice from states, the Indicated Midwest Commissions recommend continued use of the state-federal panels and further examination of ways to use the provisions of FPA Section 209. Moreover, once the regional state committee has been formed and is functional, that entity will be useful in further facilitating state-federal cooperation on these types of issues.

• Issues involving RTO implementation, operation and oversight in which the RTO would benefit from receiving coordinated and coherent advice from a regional state organization.

The Indicated Midwest Commissions agree with the Commission that states can be more effective in advising RTOs if they organize regionally to attempt to speak with a more unified voice. Indeed, the Indicated Midwest Commissions have gone far in developing

informal protocols to assist them in participating in Midwest Independent Transmission System Operator (MISO) advisory forums, policy formulation subcommittees and issue working groups. The Indicated Midwest Commissions appreciate the Commission's support for these efforts. The Commission's most helpful role in this area is to ensure that the RTO remains amenable to receiving collective advice from the state commissions (and stakeholders) and that the RTO's processes and structures are designed to ensure such collective state advice is given meaningful consideration. Advisory processes directly linked to RTOs, such as those currently in place at the MISO, should be continued.

III. PROPOSAL

As stated above, the Indicated Midwest Commissions have sketched out an initial framework for a flexible regional state organization tentatively labeled as "Midwest Multi-State Committee" (MMSC).⁴ See Attachment A. The conceptual structure that the Indicated Midwest Commissions tentatively propose as to form includes details such as:

- Membership
- Method of selection
- Structure and governance
- Decisional rules
- Scope of authority
- Staffing
- Funding

Membership in the MMSC would be open to all state regulatory authorities (and Canadian counterparts) that regulate the retail electric or distribution rates of transmission-owning members of the MISO and regulatory authorities of states or provinces in which transmission-owning members of the MISO or independent transmissions companies associated with the MISO own transmission facilities. The MMSC would be directed by a

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⁴ The Indicated Midwest Commissions note the Commission's NOPR statement that, "The specifics of how this advisory committee would be formed and operate would be decided on a regional basis." NOPR at ¶ 552.

steering committee to which each eligible member of the MMSC may designate one person. The steering committee will organize an executive committee that will hire or contract with an executive coordinator. With respect to funding, the Indicated Midwest Commissions generally believe the operating expenses of the MMSC are appropriate administrative expenses of the MISO. Discussions are ongoing with the MISO to establish funding mechanisms and procedures suitable to both the Indicated Midwest Commissions and to the MISO.

The structure of the MMSC is evolving. Current discussions have the MMSC with three standing subcommittees: a "planning" committee to address matters that are clearly state jurisdictional like those described in the National Governors' Association

Task Force on Electricity Infrastructure, and two to address all other issues described in these Comments. The planning committee may organize project teams, for example, to address siting of particular proposed transmission facilities. Under the heading of All Other Issues, the subject matter and workload initially dictate two committees: one to address issues related to the tariffs of the MISO and member ITCs and another to address Midwest market development and seams issues.

We believe the structure of such a cooperative regional state organization is within the purview of the states. Therefore, the proposed structure of the MMSC is presented to the Commission, not for its approval, but only as a framework to clarify how states can organize on a regional basis to address electric industry and market issues described herein.

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⁵ The Indicated Midwest Commissions are open to the eventual possibility of converting the State-Jurisdictional Issues Subcommittee into an official Regional Interstate Siting Compact. However, given that development of official regional compacts requires Congressional approval (which may be hard to obtain), it appears prudent to pursue the informal voluntary approach proposed here at least as an initial matter.

IV. **CONCLUSION**

Wherefore, the Indicated Midwest Commissions appreciate the Commission's invitation for the states to comment on these important issues and urge the Commission to be supportive of the Indicated Midwest Commissions' efforts to form the regional state organization described herein.

Respectfully submitted on behalf of the Indicated State Commissions,

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February 28, 2003

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Attachment A (Working Draft)

Midwest Multi-State Committee (MMSC) Organization

Membership

Membership in the organization is open to the Public Utility Commissions (or Public Service Commission or Corporation Commission or other state agency having primary responsibilities for state electricity matters) in states served by MISO members.

Membership of the State Steering Committee

Each state agency may designate a Commissioner to serve as a member of the Steering Committee

Role of Executive Committee of State Steering Committee

- Hires or contracts coordinator and oversees work.
- Other procedures and roles will be in bylaws President chairs annual meetings, etc.

Positions on Issues

Members of the State Steering Committee or their alternates will give direction to formation of issue statements, which will then be referred to state commissions. State commissions will decide whether to sign on to group position statements, and will retain the right to file individual state comments on issues.

^{*} This chart is not meant to specify all areas of exclusive jurisdiction for state agencies, rather to illustrate the approach to organizational functions based on what are exclusively state jurisdictional roles versus all other matters.

Working Draft

Relationship between MMSC and MISO

State Steering Committee

- Meets once or twice a year in open meetings
- Holds regularly scheduled conference calls
- Records conference calls and meeting minutes
- Receives progress reports
- Approves a rotation and selects Advisory Committee members and lead states to serve on the MISO Advisory Committee.
- Works toward consensus, advises Lead States and Advisory Committee members on MISO action items
- Aids in organizing coalitions of states to form project teams for project implementation
- Through Executive Committee and staff, develops committee structure for market issues, tariff issues, and other relevant subject areas

States Holding Seats on MISO Advisory Committee

- Are members of the State Steering Committee and appointed to Executive Committee
- Act as Co-chairs of State Steering Committee conference calls
- Report progress on MISO issues
- Receive State Steering Committee consensus positions

Relationship of MMSC with FERC

- MMSC provides information directly to FERC on pertinent issues
- MMSC brings forward issues needing FERC attention
- Supports funding of MMSC through MISO with appropriate provisions to assure independence in decision-making.

Relationship of MMSC with States

Project Teams on Transmission Siting

- Each state retains full authority for approving transmission siting plans of its state
- Transmission siting teams are made up only of representatives of states that are siting each multi-state transmission project
- Each project team decides its own project goals
- Each project team decides its own process different project teams can use different processes, such as hired coordinator or facilitator, ALJ from each state, etc.

Memorandums of Understanding (MOUs) on Multi-State Siting Issues

Each state may sign MOUs with other states on multi-state siting issues. These could be signed by states involved in project teams on specific siting projects or they could be long-term MOUs to cover many siting projects.